

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEPHEN CIOLINO,

Case No. 2:19-cv-0520-MMD-CLB

Plaintiff,

v.

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
GRANTING MOTION TO SEAL**

JAMES DZURENDA, et al.,

[ECF Nos. 36 & 40]

Defendant.

Before the Court is Plaintiff Stephen Ciolino's ("Ciolino") motion for appointment of counsel. (ECF No. 36.) Defendants opposed the motion, (ECF No. 39),¹ and Ciolino replied. (ECF No. 47.) In his motion, Ciolino argues he is unable to afford counsel, the issues in this matter are too complex, he was previously appointed counsel by this Court in this matter, and his medical issues continue to worsen. (ECF No. 36.)

Defendants opposed the motion stating that Ciolino is not entitled to Court-appointed counsel, has made no showing that he is likely to succeed on the merits of his claims, and has failed to demonstrate that he is unable to articulate his claims case *pro se* in light of the complexity involved. (ECF No. 39.)

Ciolino reiterated his arguments in reply. (ECF No. 47.)

There is no constitutional right to appointed counsel in a § 1983 action. *E.g., Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *opinion reinstated in pertinent part*, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (en banc). The provision in 28 U.S.C. §1915(e)(1) gives the court discretion to "request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1); see, *e.g., Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1998) (en banc). While the decision to

¹ Defendants also filed a motion to seal medical record exhibits attached to the opposition. (ECF No. 40.) No opposition was filed.

1 request counsel lies within the discretion of the district court, the court may exercise this
2 discretion to request counsel only under “exceptional circumstances.” *Terrell v. Brewer*,
3 935 F.2d 1015, 1017 (9th Cir. 1991).

4 A finding of “exceptional circumstances” requires the court to evaluate (1) the
5 plaintiff’s likelihood of success on the merits and (2) the plaintiff’s ability to articulate his
6 claims *pro se* considering the complexity of the legal issues involved.
7 *Id.* (quoting *Wilborn*, 789 F.2d at 1331) (internal quotation marks omitted). Neither
8 factor is dispositive, and both factors must be considered before a court decides. *Id.*
9 The difficulties every litigant faces when proceeding *pro se* does not qualify as an
10 exceptional circumstance. *Wood v. Housewright*, 900 F. 2d 1332, 1335-36 (9th Cir.
11 1990). While almost any *pro se* litigant would benefit from the assistance of competent
12 counsel, such a benefit does not rise to the level of “exceptional circumstances.” *Rand*,
13 113 F.3d at 1525. Rather, the plaintiff must demonstrate that he is unable to articulate
14 his claims due to their complexity. *Id.*

15 Even assuming that Ciolino is likely to succeed on the merits of his case, the
16 Court finds that Ciolino has not established that exceptional circumstances exist in this
17 instance for the appointment of counsel. Ciolino only makes conclusory assertions that
18 this case is complex. However, this case is limited to two Counts: 1) an Eighth
19 Amendment claim alleging deliberate indifference to serious medical need due to lack of
20 treatment for Hepatitis C (“HCV”), and 2) an ADA and RA claim for denial of benefits of
21 the prison medical services program because of his HCV disability. (ECF Nos. 9 & 17.)
22 These are not particularly complex. Moreover, Ciolino was greatly benefited by his prior
23 appointed counsel who completed extensive discovery in the action entitled, “In Re:
24 HCV Litigation, Case No. 3:19-CV-0577-MMD-CLB.” These materials are available at
25 Ciolino’s institution for his review and use and will greatly lessen the difficulty in litigating
26 this case. Ciolino only needs to send a kite requesting a review of these materials. In
27 addition, Ciolino has been granted time to conduct any further discovery he may
28 require. (ECF No. 45.)

For good cause appearing, Defendants' motion to seal medical records exhibits attached to their opposition to motion for counsel, (ECF No. 40), is **GRANTED**.


UNITED STATES MAGISTRATE JUDGE